

Internal Revenue Service

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Third Party Communication: None

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PLR-116217-07

Date:

June 14, 2007

Parent =

Sub =

Sub 1 =

Sub 2 =

Sub 3 =

State A =

State B =

W =

LLC X =

PRS Y =

d =

e =

f =

Business C =

PRS Z =

Dear

We respond to your request dated April 2, 2007, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was provided on June 6, 2007. The information submitted for consideration is summarized below.

Parent is a State A corporation whose stock is publicly traded. Parent has two classes of stock outstanding, common and preferred. Parent has d shareholders that own 5 percent or more of Parent common stock.

Parent owns all of the stock of Sub, a state B corporation. Sub is engaged in Business C. Parent also owns Sub 1, Sub 2, Sub 3, and directly and indirectly, all of the equity interests in W.

Sub owns all of the interests in LLC X, a single member limited liability company that is disregarded as separate from Sub for Federal income tax purposes. LLC X in turn owns an e percent interest in PRS Y, an entity treated as a partnership for Federal income tax purposes. Sub also owns an f percent interest in PRS Z, an entity treated as a partnership for Federal income tax purposes.

For what has been represented as valid business purposes, Parent proposes to invert the corporate structure so that Parent becomes a subsidiary of Sub. The following will occur as a result of the proposed transaction:

- (i) Sub will recapitalize its outstanding common stock (the “Recapitalization”). In the Recapitalization, Parent will exchange its shares of Sub common stock for new shares of Sub common stock (the shares will have the same characteristics as the old shares). The number of shares received by Parent will be determined pursuant to a valuation that Parent will undertake in connection with the proposed transaction and will be intended to be the number necessary so that, taking into account the Sub shares issued to the Parent shareholders in the Merger (defined below), the pre-Merger value of the Sub stock owned by Parent will be preserved in accordance with Notice 94-93, 1994-2 C.B. 563.
- (ii) Sub will form a new subsidiary under State A law (“Merger Sub”), the sole purpose of which will be to effect the Merger described in the following step.
- (iii) Merger Sub will merge, pursuant to State A law, with and into Parent, with Parent surviving the merger (the “Merger”). In connection with the Merger, all of the outstanding shares of Parent common stock will be canceled, and Sub will issue to the common shareholders of Parent (the “Transferors”) one share of Sub common stock in exchange for each share of Parent common stock outstanding. By operation of law, Sub’s shares of common stock of Merger Sub will convert into shares of Parent common stock. Parent’s preferred stock will remain outstanding.
- (iv) Immediately following the merger, Parent will distribute to Sub, for cancellation, all of the shares of Sub stock that Parent owns (the “Distribution”).

The following representations have been made in connection with the proposed transaction:

- (a) The Recapitalization will qualify as a reorganization within the meaning of §368(a)(1)(E).

- (b) Merger Sub will be formed immediately prior to, and solely for purposes of, effectuating the Merger.
- (c) No stock or securities will be issued for services rendered to or for the benefit of Sub in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub that is not evidenced by a security or for interest on indebtedness of Sub which accrued on or after the beginning of the holding period of the Transferors for the debt.
- (d) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (e) The Transferors will not retain any rights in the property transferred to Sub.
- (f) The Parent common stock will not be transferred subject to any liabilities and Sub will not assume any liabilities of any Transferor in connection with the transfer of such stock.
- (g) There is no indebtedness between Sub and the Transferors, and there will be no indebtedness created in favor of the Transferors as a result of the transaction.
- (h) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (i) All exchanges will occur on approximately the same date.
- (j) There is no plan or intention on the part of Sub to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction, except for Parent's distribution of the Sub stock to Sub in the Distribution.
- (k) Taking into account any issuance of additional shares of Sub stock; any issuance of stock for services; the exercise of any Sub stock rights, warrants, or subscriptions; a public offering of Sub stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub to be received in the exchange, the Transferors will be in "control" of Sub within the meaning of §368(c).
- (l) Each Transferor will receive stock or other property approximately equal to the fair market value of the property transferred to Sub.
- (m) Sub will remain in existence and retain and use the property transferred to it in a trade or business.

- (n) There is no plan or intention by Sub to dispose of the transferred property other than in the normal course of business operations, except for Parent's distribution of the Sub stock to Sub in the Distribution.
- (o) Each of the parties to the transaction will pay its, his or her own expenses, if any, incurred in connection with the proposed transaction.
- (p) Sub will not be an investment company within the meaning of §351(e)(1) and §1.351-1(c)(1)(ii) of the Income Tax Regulations.
- (q) To the best of Parent's and Sub's knowledge, no Transferor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of §368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (r) Sub will not be a "personal service corporation" within the meaning of §269A.
- (s) Pursuant to State B law, during the period subsequent to the Merger and prior to the Distribution, Parent will not be entitled to vote the Sub common stock.
- (t) Sub will not assume (within the meaning of §1.301-1(g)) any liabilities of Parent in connection with the distribution.
- (u) For purposes of applying §§301 and 311 to the Distribution, Parent and Sub will treat the amount of the Distribution and the value of the shares of Sub common stock distributed as equal to the fair market value of the Sub common stock owned by Parent immediately prior to the Merger.

Based solely on the information submitted and representations set forth above, we rule as follows on the proposed transaction:

- (1) For Federal income tax purposes, the formation and merger of Merger Sub with and into Parent will be disregarded. See Rev. Rul. 67-448, 1967-2 C.B. 144. Instead, the holders of Parent common stock (i.e., the Transferors) will be treated as transferring their Parent common stock to Sub in exchange for newly issued shares of Sub common stock in a transaction within the meaning of §351.
- (2) The Transferors will recognize no gain or loss upon the transfer of the parent common stock to Sub solely in exchange for Sub common stock. Section 351(a).
- (3) No gain or loss will be recognized by Sub upon the receipt of the Parent common stock in exchange for newly issued Sub common stock. Section 1032(a).

- (4) A Transferor's basis in the Sub stock received will equal the basis of the Parent common stock held immediately before the transfer. Section 358(a).
- (5) Sub's basis in each share of Parent stock received will equal the basis of the Parent shares in the hands of the Transferors immediately before the transfer. Section 362(a). In the event, however, that immediately after the transfer, Sub's aggregate adjusted basis in the Parent common stock received from a particular Transferor exceeds its fair market value, then §362(e)(2) will apply to reduce Sub's aggregate adjusted basis in such block of stock to its fair market value.
- (6) The holding period of the Sub common stock received by each Transferor will include the holding period of the Parent common stock, provided such property was held as a capital asset by the Transferor on the date of the exchange. Section 1223(1).
- (7) The holding period of the Parent common stock received by Sub from each Transferor will include the period during which such Transferor held the stock. Section 1223(2).
- (8) The Distribution will be treated as a distribution of property (i.e., the Sub common stock) by Parent with respect to the Parent common stock held by Sub immediately after the merger. For purposes of applying §§ 301 and 311 to the Distribution, the amount of the Distribution and the value of the shares of Sub common stock distributed will equal the fair market value of the Sub common stock owned by Parent immediately prior to the merger.
- (9) Parent will recognize gain on the Distribution to the extent that the fair market value of any share of Sub common stock distributed exceeds Parent's basis in Sub common stock. Section 311(b). Parent will not recognize any loss with respect to any share of Sub common stock distributed. Section 311(a).
- (10) Sub will treat the receipt of the Sub shares as a dividend to the extent of the current and accumulated earnings and profits of Parent. To the extent that the fair market value of the Sub shares distributed exceeds Parent's current and accumulated earnings and profits, the excess will be treated by Sub as a reduction to Sub's adjusted basis in its Parent shares. To the extent that the fair market value of the Sub shares distributed exceeds parent's current and accumulated earnings and profits and exceeds Sub's adjusted basis in its Parent stock, the excess will be treated as a gain from the sale or exchange of property. Sections 301(c) and 316.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)